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SUMMARY RECORD OF THE 1391st MEETING

Held at Headquarters, New York,
on Wednesday, 22 March 1995, at 10 a.m.

Chairman: Mr. AGUILAR

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The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Argentina (continued) (CCPR/C/75/Add.1)

Right to life, treatment of prisoners and other detainees, liberty and security of the person and right to a fair trial (articles 6, 7, 9, 10 and 14) (section II of the list of issues) (continued)

Non-discrimination and equality of the sexes, right to privacy, freedom of conscience, religion, expression and association, and protection of the family and children (article 2, paragraph 1 and articles 3, 17, 18, 19, 21, 23, 24 and 26) (section III of the list of issues) (continued)

1. At the invitation of the Chairman, Mr. Barra and Ms. Regazzoli (Argentina) took places at the conference table.

2. Mrs. MEDINA QUIROGA, referring to section II of the list of issues, said she had been struck by the problem of minors in general and the children of disappeared persons in particular. More information was needed on their plight. Furthermore, the reporting State should provide additional data on any programmes designed to help such minors emotionally.

3. Regarding reform of the Code of Criminal Procedure, she expressed concern that the new Argentine Constitution and the criminal code seemed to be at cross purposes. Specifically, the code talked about the circumstances in which release from prison could be granted, but said nothing about when, how and for what purpose an individual should be held in pre-trial detention or custody. The reporting State should therefore clarify the purpose of pre-trial detention. She was particularly concerned that an individual might be held in pre-trial detention for a period equivalent to the maximum term of imprisonment applicable to the crime of which he had been accused. In addition, the article in the Code of Criminal Procedure dealing with bail gave the impression that the amount of bail set might be related to the economic nature of the crime involved, and thus bail could be regarded as an anticipation of penalty. She would appreciate assurances from the reporting State that pre-trial detention was not simply being abused as an instrument of punishment prior to the initiation of trial proceedings.

4. On the matter of Argentine drug legislation, she sought further information about points of divergence between the relevant legislation and the provisions of the Code of Criminal Procedure.

5. With regard to section III of the list of issues and article 2 of the Argentine Constitution, she inquired whether the Roman Catholic Church was an integral part of any State institutions, and if so, what implications such involvement had for the equality provisions made explicit in article 18 of the Covenant. Lastly, she noted that although it was no longer a requirement that the President, Senators and Supreme Court judges should be Roman Catholics, she

was still puzzled by the minimum income requirement mentioned in articles 55, 89 and 111 of the Constitution and wondered why that discriminatory provision had not been removed.

6. Mr. BÁN, referring to cases of torture that had occurred since the end of the military regime in Argentina, inquired why the Argentine Government had remained silent about those cases in its report, why the police and security forces had seen fit to resort to torture, and what steps were being taken to fully eradicate the practice. He also noted that cases of enforced disappearance continued to occur; more information was needed about those cases, and particularly about the role played by the police in such crimes.

7. Regarding the Committee's questions submitted in sections II and III of the list of issues, he was disappointed that the reporting State had not provided full enough answers to section II (h) and section III (a) and (e). Additional details were required on measures designed to curb intimidation of judges and journalists and impose tighter controls on clandestine police methods.

8. Mr. KLEIN asked whether, in the light of article 10, paragraph 1, of the Covenant, the Argentine Government was contemplating any legal measures to review life sentences with a view to releasing prisoners after a set period of time had elapsed. He pointed out that human dignity was violated in cases where prisoners stood absolutely no chance of being released.

9. Mrs. EVATT said that the atmosphere of impunity in Argentina with regard to past human rights abuses still appeared to affect the attitudes and behaviour of the police and the military, as evidenced by the continuing extrajudicial killings. It would be useful to know whether the reporting State was contemplating a general inquiry into the police with a view to restructuring and reorganizing the entire institution.

10. On the subject of prisons, it was unclear whether there were any special facilities for juvenile detainees. She was also concerned that two thirds of the female prison population was on remand, and wondered whether that proportion had changed as a result of new laws governing that matter. The same consideration applied to the 3,000 prisoners being held in police custody owing to lack of prison space.

11. Noting that the Code of Criminal Procedure gave judges the right to issue warrants authorizing the interception of telephone calls, she asked the reporting State to clarify the criteria that were used to draw up such warrants.

12. Mr. ANDO, commenting on the issue of pre-trial detention, inquired how the Argentine Government's treatment of that matter complied with the principle of the presumption of innocence. He requested more details about intimidation of judges and journalists, and further information on police investigations into students' political affiliations. Lastly, he noted that there still seemed to be inequality between the sexes on the issue of the management of marital property. The reporting State should explain the position more fully, and should be more specific on the comparative rights of children born in and out of wedlock and the transmission of citizenship through marriage.

13. Mrs. HIGGINS said that the Committee would welcome clarification on precisely what correspondence could be confiscated by police and security officers pursuant to article 185 of the Code of Criminal Procedure. The question of whether Argentine law enshrined a general prohibition of wire-tapping also needed clarification. It would also be interesting to know precisely in what circumstances a judge could order a phone to be tapped, and what redress was available to persons who disputed that the authorities had satisfied the legal requirements for telephone tapping or interception of mail.

14. Mr. FRANCIS said that he understood the inevitability of general amnesty in response to the recent events in Argentina's history, but, given the intensity of the human rights violations committed and the consequences for their victims, he wondered what consideration had been given to the issue of compensation.

15. It would be important to learn whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were being undermined by the overcrowding in Argentine prisons, particularly the provisions regarding separate facilities for juvenile offenders.

16. Mr. KRETZMER said that very disturbing reports of police violence had been received from many sources. More information was needed on the procedures for investigating such occurrences, the institutional arrangements for individuals submitting complaints, particularly to protect them from further harassment, and the arrangements for independent investigation.

17. The relationship between the federal Government and the provincial governments was not clear, in particular, the extent of the federal Government's power to impose the application of the Covenant on provincial governments.

18. The CHAIRMAN, speaking in his personal capacity, said that more information was needed on the Government's policy regarding immigrants. He wondered if the programme for settling Eastern European immigrants would be extended to other groups.

19. Ms. REGAZZOLI (Argentina) said that she was transmitting to the Committee in written form the most recent information on the transfer of land to indigenous groups.

20. Mr. BARRA (Argentina) said, in reply to many questions regarding pre-trial detention, that it was only one part of the process of bringing a case to trial and that it did not alter the presumption of innocence of the accused. It was simply a precautionary measure used when there was a risk that a defendant might not appear in court as ordered. It was the exception rather than the rule; the normal practice was to set bail. Pre-trial detention was limited to a two-year maximum, which could be extended by one year. In the event of a conviction, any sentence imposed would be reduced by two years for each year of pre-trial detention served beyond the two-year limit. In a sense, pre-trial detention did constitute serving a sentence in advance, but because of the individual circumstances of certain cases, it was sometimes appropriate. No special legal regime was applied to drug-trafficking offences, although some special methods could be used in their investigation. A longer term of pre-trial detention was

applied for narcotics-trafficking offences because of their gravity and the difficulty and danger in their investigation.

21. The prison system was a subject of special concern to the Argentine Government. Accordingly, the President of the Republic would sign in the very near future the first overall plan for prison policy covering the period 1995-1999. Part of that plan included the amendment of the prison code. The main goal of a prison sentence was the social rehabilitation of the offender; thus, some prison structures were being changed to reflect that goal. Efforts were being made to increase professionalism among the prison personnel and to encourage greater specialization. Of course, no new policies could be implemented without adequate facilities, and efforts were under way to improve conditions in Argentine prisons. Construction of a new prison to house about 300 prisoners had begun, and two more, designed to house a total of 3,300 prisoners, were scheduled for completion in April 1996. The new prisons were entirely modular and consisted mainly of single cells, with open space for recreation, a hospital, workshops, educational and sports facilities and facilities for religious observance. Two additional prisons were scheduled for construction by mid-1997. In a third phase, the existing federal prisons in provincial cities would be replaced and relocated to the area around Buenos Aires, in order to facilitate visits to prisoners by family members and legal advisers. No prisoners were serving their sentences in police or military installations because of overcrowding.

22. The sentence of life imprisonment was imposed only in exceptional cases: he was aware of only one life sentence currently being served. The possibility of parole after 25 years; the president could also commute the sentence.

23. The Constitution guaranteed privacy, which extended to all types of communications, including electronic mail. On an exceptional basis, judges could order telephone taps or the interception of other forms of correspondence. Such orders would be executed by the judicial police. Similar legal procedures existed to regulate such measures in almost every legal system.

24. The 1977 reform of the Civil Code had eliminated all distinction between legitimate or "illegitimate" children; the rights of children born either within or out of wedlock were absolutely equal. Both spouses had equal rights regarding marital property and both must approve the sale of joint property. Each spouse retained control over individual property acquired before marriage. In practice, however, the evolution of the roles of men and women was a cultural process. The Government had made a commitment to promote women's rights, and, while the situation was not perfect, many positive changes had occurred.

25. Regarding the implementation of the Covenant by provincial governments, the federal Government did have the power to intervene in extreme cases where a provincial government did not apply the Covenant. The Supreme Court of Justice provided the guarantees for the application of international human rights treaties, and could rule on the constitutionality of a provincial law if it was at variance with federal law.

26. Ms. REGAZZOLI (Argentina) recalled that several members of the Committee had expressed concern regarding the situation of children whose parents had disappeared during the state of siege. She said that in 1983, after the restoration of democracy, it had become clear that such children and their families had been left with a difficult legacy of psychological and medical problems. The Government had endeavoured to provide all the necessary forms of support; one example of that was the issuance of travel documents at short notice, to enable such children to visit relatives in other countries.

27. Regarding the overall situation of young people, Argentina was not exempt from the problems that other countries were facing. Particular measures were being taken to protect street children from exploitation, and to help young people who were drug-users or otherwise at risk. Citizens wishing to help street children could give them food coupons rather than money, which would be taken from them by the adults who were exploiting them. Helping such children was not a simple problem that could be solved overnight. There was a need to increase public awareness of the problem. The real solution lay in a return to the traditional role of the family.

28. The increase in juvenile delinquency was to a great extent due to drug use; Mr. Barra had already mentioned some of the facilities which had been created for the rehabilitation, reintegration and training of young people.

29. Mr. BARRA (Argentina) said that young people under the age of 18 in Argentina could not face criminal charges; those between the ages of 16 and 18 could in certain circumstances be placed in special institutions. In prisons, those aged between 18 and 21 were housed separately from adults.

30. Ms. REGAZZOLI (Argentina), replying to a question asked by Mr. Bán, said that when the report was being prepared, her Government had not been aware of the complaints of torture to which he referred.

31. Mr. BARRA (Argentina), referring to a question by Mrs. Medina Quiroga regarding the connection between article 18 of the Covenant and article 2 of the Constitution, said that there was no real contradiction between the two. Support for the Roman Catholic faith was indeed mentioned in the Constitution, but that was for historical reasons, and its continuance was due to the fact that about 90 per cent of the population was Catholic. Religious freedom, which had already been guaranteed by the 1853 Constitution, had been further strengthened by the inclusion of the human rights treaties in the present Constitution. Religious discrimination was not practised, and there was no religious instruction in State schools. It was true that military chaplains were paid by the Government and that the Roman Catholic faith had a privileged status in Argentina; there was, however, a total separation of Church and State. As for the minimum income requirement for election to the Senate, although the Constitution (article 55) called for an income equivalent to 2,000 "pesos fuertes", that currency no longer existed and the rule was no longer applied in practice.

32. Ms. REGAZZOLI (Argentina), referring to a question regarding attacks on journalists and the protection of freedom of the press, said that according to certain journalists, the media currently had more freedom than ever before. A number of individuals who had been responsible for many attacks on journalists had been identified and they had no connection whatsoever with any government body.

33. Referring to questions that had been asked about the Government's policy on immigration, she said that that policy was very open; national identity papers had been issued to considerable numbers of citizens of neighbouring countries, and immigrants who had been resident in Argentina for more than 10 years would be allowed to vote in the next elections.

34. Mr. PRADO VALLEJO welcomed the positive nature of the dialogue which had taken place between the Committee and the representatives of Argentina, and thanked them for their specific and objective answers. The Government had made real progress in strengthening the enjoyment of human rights, especially by giving the international human rights instruments the force of constitutional law. However, certain laws which had originated during a regrettable period of the country's recent history, such as the "Punto Final" and "Due Obedience" laws, as well as the laws on amnesty and pardon, had led to incompatibilities with the guarantees enshrined in the Covenant. Attention should be given to that point, because in some cases the continued existence of such laws had obstructed the legal rights of the victims of abuses.

35. Mr. BUERGENTHAL said that Argentina had made impressive progress in overcoming the legacy of its tragic past. The recent changes to the Constitution, and other wide-ranging legal reforms, were of major significance and clearly showed the importance given to human rights by the people and the Government of Argentina. What was less clear from the report submitted to the Committee, and the accompanying oral presentations, was how those reforms were being implemented. The appropriate information should be provided to the Committee in the next report.

36. Reforms on the scale of those being attempted could not be carried out overnight. However, the Government should be aware that the Committee could fully appreciate the problems encountered only if it was provided with appropriate information as to the obstacles and difficulties that had arisen and the efforts made to overcome them.

37. He would welcome additional information regarding the work of the enforcement judge and his interaction with the Government Procurator for the Prison System. He also wondered why, in elevating certain human rights instruments to constitutional status, the Government had not included the Geneva Conventions and their Protocols, which could be relevant in the context of any future state of siege.

38. The Government should bear in mind its international obligation to investigate fully the new allegations of killings committed by its armed forces. At the very least, those responsible should not be allowed to remain in the armed forces. Investigations should proceed regardless of the identity or motives of the complaining party.

39. Mrs. EVATT said that the report, and the additional information provided by the representatives of Argentina, showed many positive and encouraging developments in that country. The new Code of Criminal Procedure, with its provisions for oral proceedings and rules on pre-trial detention, and the establishment of the Government Procurator for the Prison System, were very important.

40. Many concerns still remained, however, particularly regarding the amnesty laws. The authoritarian legacy of the past still seemed to be affecting the attitudes and behaviour of the armed forces, police, and security forces. Determined efforts were needed to overcome those attitudes and to deal with the incidents arising out of them.

41. She expressed concern regarding the length of pre-trial detention in the case of persons ultimately found not guilty; it was important that the length of such detention should be kept to a minimum, in accordance with article 9 of the Covenant. Above all, any outstanding claims for compensation should be brought to a successful conclusion as soon as possible.

42. She looked forward to finding details in the next report from Argentina as to how the new Constitution, as well as the Covenant itself, were analysed and interpreted by the courts.

43. Mr. EL-SHAFEI thanked the representatives of Argentina for their cooperation, and for the spirit of openness and frankness they had shown. He expressed concern regarding the incompatibility of certain existing laws with the effective implementation of the Covenant in that country. Such negative factors should not be permitted to affect the right to compensation of the victims of human rights violations. The Government should make further efforts to resolve the cases of disappeared persons, and to prevent attacks on journalists and the excessive use of force by the police.

44. Mr. KLEIN noted the improvement in the human rights situation in Argentina and welcomed, in particular, the status accorded by the new Constitution to international human rights instruments, including the Universal Declaration of Human Rights. He was not satisfied, however, with the delegation's responses concerning discrepancies between constitutional norms and international instruments which, for obvious reasons, could not be changed to harmonize with national legislation. The good will shown by high-level government officials did not always filter down to the lower levels of authority, particularly where there was direct contact with private citizens. In that connection, reports by non-governmental organizations (NGOs) were rather disturbing and indicated that much remained to be done in order to transform the mentality of the authorities at every level.

45. He welcomed, in particular, initiatives taken by the Argentine Government to include human rights education as a compulsory subject in the schools. Lastly, the presumption of innocence, a vital principle in criminal prosecution, should not be used as a pretext to avoid restructuring the public administration.

46. Mrs. MEDINA QUIROGA welcomed the progress achieved in the field of human rights in Argentina, in particular the status accorded to international human rights instruments. She noted that cultural change generally lagged behind legislative reform and referred, in particular, to the Latin American tradition of authoritarianism, which was still reflected to some extent even in the amended legislation of Argentina and other Latin American countries. Under Argentina's new code of criminal procedure, for example, pre-trial detention was decided according to the category of offence, a premise which seriously affected the principle of the presumption of innocence. The characterization of crimes in the Code of Criminal Procedure should be revised, as many of the offences allegedly committed by detainees were fairly insignificant. That would ease the problem of overcrowded prisons, which merely bred crime and placed a burden on countries with economic difficulties.

47. Mr. ANDO expressed appreciation for the oral presentation and the responses given by the Argentine delegation, which greatly compensated for shortcomings in the second periodic report itself. The link between the length of pre-trial detention and the anticipated sentence was still not clear and, in any case, was not consistent with the principle of the presumption of innocence. He wondered whether nationality was conferred on foreigners married to Argentine males and foreigners married to Argentine females on an equal basis. Perhaps the next periodic report could include information on that subject. He welcomed the 1994 constitutional reform process, particularly the importance attached to international human rights instruments, including the Covenant and the Optional Protocol. Like Mrs. Medina Quiroga, however, he had some reservations about the effect of the authoritarian culture on the implementation of the new legal provisions. The fact that both Argentina and Brazil had ratified the Covenant meant that it now covered the majority of Latin Americans.

48. Mr. LALLAH welcomed the constitutional reforms introduced but he expressed concern that the victims of past human rights violations had not been fully compensated. Monetary compensation was not sufficient; as Mr. Buergenthal had suggested, those responsible for the violations must be removed from positions of authority. In that connection, the practice of reassigning military personnel to other areas of the executive branch should be followed systematically. While the delegation had denied government involvement in violations committed against members of the media and the judiciary, the attacks on journalists and trade unions were none the less disturbing. Under article 2, paragraph 2, of the Covenant, the Argentine Government was obligated to take administrative and executive measures to ensure that such violations did not occur. Otherwise, the democratic system would be undermined by a culture of impunity.

49. Mr. BRUNI CELLI said that the responses provided by the delegation went a long way towards making up for the shortcomings in its second periodic report. Despite the reforms introduced, the shadow of past human rights violations still hung over Argentina. The Government must make every effort to prosecute the perpetrators and to provide both material and moral compensation to the victims. He hoped that an expeditious and impartial investigation of the most recent complaints filed would be conducted.

50. Mr. BÁN commended Argentina on its new Constitution, its Code of Criminal Procedure and the establishment of the post of Government Procurator for the Prison System. He agreed with other members of the Committee that much remained to be done in implementing the new legislation. Particularly disturbing were the amnesty laws, which might encourage further human rights violations in future. He was equally concerned by the fact that the criminal justice system was slow to prosecute those responsible for human rights violations. The Argentine Government should take drastic measures to identify and punish the perpetrators of more recent human rights violations.

51. Mr. FRANCIS welcomed the constitutional reform process which had taken place in Argentina and the judiciary's progressive interpretation of the relationship between national legislation and international human rights instruments. He also commended affirmative action taken in order to increase the representation of women in the National Congress; judicial reforms, particularly with regard to the resolution of conflicts through mediation; the establishment of the Ministry of Natural Resources and the Human Environment; and the introduction of programmes to rehabilitate prisoners and train prison staff.

52. Mr. KRETZMER welcomed Argentina's anxiousness to comply with the Covenant but pointed to a number of problems inherent in the difficult transition from an authoritarian regime to a democratic system. Like other Committee members, he was concerned that human rights violations committed under the previous regime had gone unpunished; he shared Mr. Bán's fears that that could have future repercussions. He called for a total delegitimization of the acts carried out under the previous regime, particularly in view of the claim that such methods were justified at the time. When those responsible for such acts remained in positions of authority, delegitimization was at best partial. He also shared Mr. Bán's concern about the gap between legal norms and actual practice, particularly with regard to the protection of individuals against human rights violations or arbitrary action by persons in positions of authority or acting under colour of authority. He welcomed the introduction of an independent mechanism to investigate the alleged mistreatment of prisoners and hoped that similar mechanisms would be introduced to deal with other violations, in particular police violence.

53. Mr. POCAR, commending Argentina on its constitutional reforms and its incorporation of international human rights treaties into its Constitution, endorsed Mrs. Medina Quiroga's proposal that the criminal justice system should be reviewed in the light of the constitutional reforms. In that connection, the judiciary and the Supreme Court would have a vital role to play. Awareness of the activities of the Human Rights Committee and, in particular, of its general comments could be extremely valuable to the judiciary in its efforts to implement the Covenant. He attributed current human rights violations, including attacks on trade unions and the media, to Argentina's legacy of human rights violations. He expressed concern about the effect of impunity and hoped that investigations of such violations would continue. Those responsible should be removed from positions of authority not only as a form of reparation but also in order to prevent future violations. Monetary and, more important, moral compensation must be provided to the victims.

54. The CHAIRMAN said that the second periodic report of Argentina had been insufficient, particularly as it had failed to address many questions raised during consideration of the first periodic report. However, he praised the thorough and honest presentation given by the delegation. Recognizing that the transition from dictatorship to democracy was difficult, he urged that human rights violations committed during the dictatorship should continue to be investigated; the Argentine people had a right to know what had occurred between 1976 and 1983. He expressed concern about the possible repercussions of impunity, and outrage that, several weeks earlier, it had come to light - two decades later - that some disappeared persons had been thrown into the sea. He found it even more incredible that the person who had revealed that information had been branded a traitor and that members of the military continued to attempt to conceal such violations.

The meeting rose at 1.10 p.m.